

STATEMENT FOR HELSINKI COMMISSION ON HEARING ON COUNTERING OLIGARCHS, ENABLERS AND LAWFARE

When Roman Abramovich filed his defamation lawsuit 22 March 2021 against HarperCollins and Catherine Belton over “Putin’s People”, his lawyers centred their case on the following complaint:

"The political climate is one of deep suspicion and mistrust towards President Putin and the Russian State, with the result that allegations that the Claimant has a close and corrupt relationship with President Putin and covertly acts under his direction will inevitably cause very serious harm to the Claimant’s reputation."

What Abramovich’s lawyers were alleging went far beyond any meaning contained in the pages of “Putin’s People”. Later in November 2021, a UK High Court judge agreed. Ruling for a preliminary hearing on meaning, Justice Tipples threw out Abramovich’s claim that “Putin’s People” described his relationship with Putin as a corrupt one. She found instead that the book said he was under Putin’s control.

Now, a mere four months later and in the depths of Putin’s war against Ukraine, Abramovich is happy to be seen acting on Putin’s behalf on the world stage. As Abramovich scurries to “assist” in the peace talks between Russia and Ukraine, Ukraine’s lead negotiator has told the Wall Street Journal he asks Abramovich to communicate issues to his “boss”, meaning the Russian president. Putin’s relationship with and control over Abramovich is now part of the accepted narrative.

This demonstrates clearly that HarperCollins and Catherine Belton had no defamation case to answer at all.

However, from the moment Abramovich loudly announced he was filing suit to the end of last year, HarperCollins and the author were nearly buried under a barrage of legal complaints that threatened to lead to the withdrawal of the book. We were hit with a total of five lawsuits from four of Russia’s richest men: Abramovich; Mikhail Fridman and Pyotr Aven of Alfa Group, Shalva Tchigirinsky, as well as the Kremlin oil champion Rosneft. Alisher Usmanov, the Kremlin-linked billionaire, also threatened to file suit in a series of costly legal exchanges. Fighting the lawsuits – each of which were based on the flimsiest of grounds and on the most exaggerated of claims – consumed the entire year and cost HarperCollins £1.5m just to get to the preliminary meanings stage.

Experienced media lawyers say they have never experienced an attack of such scale and intensity. We take with a large pinch of salt the assertion these legal attacks were not coordinated. The claims – all filed within the space of just five weeks and at the very limit of the limitation period – came less than two months after Alexei Navalny, the now jailed opposition leader, released his video investigation about Putin’s luxurious \$1bn palace on the Black Sea. During the film, Navalny publicly endorsed “Putin’s People” and held the book to the camera. The film has been watched by millions of Russians and undoubtedly caused the book to come under greater Kremlin scrutiny.

It seems that the aim of these lawsuits was to discredit the book and deter others from attempting similar investigations of the Putin regime.

This was Kremlin lawfare at its most extreme. For good measure, Abramovich’s lawyers filed the exact same claim against HarperCollins in Australia, even though Abramovich had no real reputation to protect or business interests there. Inequality of arms play their part here. Kleptocrats and oligarchs often have unlimited resources. Integral to the devastating effects of lawfare are the rapidly spiralling legal costs. Abramovich’s actions in Australia were a clear attempt to double the potential costs for HarperCollins and intimidate them further.

Thanks to HarperCollins’s steadfast refusal to be intimidated, the Abramovich, Fridman and Aven cases were eventually settled with minor amendments most readers would not notice, while Rosneft, the Kremlin controlled oil major, was forced to withdraw its case after the judge in a preliminary hearing threw out three of its four claims and said it would have difficulty demonstrating serious harm on the fourth.

None of these cases should have gotten so far in the first place or been allowed to consume so much of HarperCollins’ time and money. Media freedom campaigners said they were clear examples of so-called SLAPP cases, strategic lawsuits against public participation - aimed at harassing, outspending and intimidating journalists into silence and censorship. We would not have made any changes at all were it not for the sheer cost of fighting such claims. Continuing to fight the Abramovich case alone would have cost more than £2.5m in the UK, according to a conservative estimate, and upwards of a further £2.5m in Australia. Under any circumstances, this is enough to deter anyone from attempting to defend a claim.

We published a second book in 2020 that attracted lawfare, this time from ENRC (Eurasian Natural Resources Corporation), the London arm of a mining and minerals corporation controlled by three oligarchs from the former Soviet Union (the Trio). Tom Burgis published “Kleptopia: How Dirty Money Conquered the

World” in September of that year in both the UK and US. The legal threats started before publication. After publication, lawyers acting on behalf of ENRC issued subpoenas in the US courts in a futile attempt to get access to documents they hoped would reveal Burgis’s sources. In public filings, ENRC’s lawyers at Boies Schiller insinuated that he’d been taking backhanders and was writing with malicious intent, an allegation completely without foundation. This action cost hundreds of thousands of dollars to defend.

In 2021, ENRC issued defamation proceedings against HarperCollins UK, Burgis and the “Financial Times” in the UK. They chose not to object to the many allegations of corruption and fraud in the book perpetrated by the Trio; rather they claimed ludicrously that the book argued that ENRC – a UK-based holding company for a Luxembourg parent company – had murdered three potential witnesses in the UK Serious Fraud Office’s criminal corruption investigation into ENRC.

It is self-evident that murder – if indeed murders is what they were – can only be perpetrated by individual humans, not corporate structures. The book describes the manner of these deaths, deems them suspicious and calls for further investigation. At no point does it suggest who killed the men. The FBI has launched an investigation into the two deaths that occurred in the US.

ENRC’s case was dismissed by Mr Justice Nicklin in March in a complete vindication for Burgis and his reporting. HarperCollins was awarded £50,000 on account for costs, with the likelihood of more to follow. These however will go nowhere near far enough to cover the actual costs to defend the book which again were immense.

If there is to be a silver lining to the battles we fought last year, it is that both these cases have served to highlight the dire need for anti-SLAPP legislation in the UK to provide better protections for journalists – including changes to improve the public interest defence. The UK government is now finally turning its attention to a problem that has been plaguing the media landscape in the UK for years. The cases are just the tip of an iceberg in a system where many journalists have been censoring themselves at the first whiff of a threatening legal letter in order to avoid having to fight costly lawsuits. Even though in 2013 UK libel law underwent wide-ranging reforms to allow for cases to be defended on the basis of truth and public interest, it is apparent these reforms did not go far enough. The way UK law is formulated, a public interest defence immediately puts the journalist on trial. This imbalance needs to be corrected.

The lawsuits have shown that no matter how well-sourced and no matter how great the public interest, defending cases on public interest grounds can run into millions of pounds – because of how time-consuming and costly the process is. The current system allows for a disclosure process before trial which can be dragged out by deep-pocketed claimants for months, if not years, to drain the defendants of funds.

The system seems stacked against journalists and media organisations from the start. Without an effective mechanism to nip such cases in the bud at an early stage and before costs become out of hand, many defendants are deterred from defending themselves. We know of cases where journalists have agreed to censor themselves on stories that they believe to be true and including on matters important for national security. It is now vital to introduce a mechanism whereby cases challenging reporting that is clearly in the public interest can be heard and ruled upon at a much earlier stage.

We know of two UK newspapers that – until the recent sanctions and change in atmosphere – have actively avoided writing about Russian oligarchs entirely because of the legal risks involved. These are busy newsrooms attempting to cover a lot of news in the world. Why go to stories that editors know might well spark convoluted and time-consuming negotiations with reputation law firms? Too many have taken the course of least resistance. This is the chill effect from SLAPPs on investigative journalism and open reporting into ultra-wealthy individuals and corporations. It is hard to evaluate its impact with concrete data – how do you quantify stories not written, books not published? But this is one reason reputation law firms earn their large fees. The chill effect on journalism, preventing information coming into the public domain.

Back in the wild days of the 1990s when Russian oligarchs did not spend huge amounts on aggressive reputation managers, reporting on them was relatively unhindered. It is as different now as night from day. Following an extensive legal bullying campaign, two national UK newspapers agreed earlier this year to retract a story about Roman Abramovich gifting a yacht to one of his closest colleagues, Yevgeny Shvidler, when this fact had been confirmed in the High Court testimony of Shvidler himself in 2011. Until Abramovich was sanctioned, his Chelsea Football Club website published a long list of the media ‘corrections’ achieved by lawyers acting on behalf of the oligarch. Following the sanctions, the list has disappeared.

The UK parliament’s security and intelligence committee in its report on Russian influence in the UK noted that Russian business was closely intertwined with the interests of the Russian state and its security services – and that to some extent

the influence of the Russian elite in London had now become so deeply embedded it was almost impossible to unravel.

London has a highly paid, expert niche of ‘concierge’ service providers with decades-long records of acting for oligarchs and kleptocrats. This includes reputation management law firms such as Schillings, Carter Ruck, Taylor Wessing, Mischon de Reya, Harbottle and Lewis and CMS. Invariably these firms are behind SLAPP actions and overtly preventing material in the public interest being put into the public domain. This undermines freedom of speech and, by extension, democratic processes. There is an overt connection of SLAPP actions to stifle and censor investigation into economic crime – whether by journalists, NGOs, activists or academics.

But it isn’t just the lawyers. There are legions of lobbyists, influencers and private security/spy agencies available for hire by anyone with sufficient funds. We placed scrupulous security measures around both books pre-publication and during the lawfare, using triple encryption and discussing sensitive material only in person and with cell phones left at home. Microphones on smart phones can be activated remotely, data sent to printers over networks hacked and video conferencing platforms accessed. It became clear to us that both Burgis and Belton were under active surveillance during the litigation and Burgis now employs anti-surveillance techniques he learned in Angola and Kazakhstan for even routine meetings in London. The security of the journalists themselves is vital to protect, but so is the privacy of the sources who have come forward, often at grave risk to themselves, to bear witness to the wrongdoing they’ve seen.

At a time when the Putin regime has been stepping up efforts to divide and undermine democracies in the West by funding far-right and far-left organisations, as well as seeking influence within mainstream political parties through funding via Russian expats, it is vital media organisations can feel free to investigate the backgrounds of these individuals without the risk of facing crushing legal costs.

With oligarchs free to bully journalists into submission, it really does seem that this is how democracy dies.

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